



DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[Docket No. DOT-OST-2022-0109]

RIN 2105-AF10

Enhancing Transparency of Airline Ancillary Service Fees

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Public hearing.

SUMMARY: This Notice announces a virtual public hearing on certain issues related to the U.S.

Department of Transportation's Notice of Proposed Rulemaking on Enhancing Transparency of Airline Ancillary Service Fees.

DATES: The virtual hearing will be held on March 16, 2023, from 10:00 a.m. to 5:00 p.m. Eastern Time. The hearing is open to the public, subject to any technical and/or capacity limitations. Requests to attend the hearing must be submitted to https://usdot.zoomgov.com/webinar/register/WN_v-c7rpgUR5yvFVePlnQU_A. We encourage interested parties to register by Monday, March 13, 2023. Communication Access Real-time Translation (CART) and sign language interpretation will be provided during the hearing. Requests for additional accommodations because of a disability must be received at Cristina.Draguta@dot.gov by Monday, March 13, 2023.

ADDRESSES: The virtual hearing will be open to the public and held via the Zoom Webinar Platform. Virtual attendance information will be provided upon registration. An agenda will be available on the Department's Office of Aviation Consumer Protection website at <https://www.transportation.gov/airconsumer/latest-news> in advance of the hearing.

FOR FURTHER INFORMATION CONTACT: To register and attend this virtual hearing, please use the link: https://usdot.zoomgov.com/webinar/register/WN_v-c7rpgUR5yvFVePlnQU_A. Attendance is

open to the public subject to any technical and/or capacity limitations. For further information, please contact Cristina Draguta, Attorney-Advisor, by email at Cristina.Draguta@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 20, 2022, the U.S. Department of Transportation (DOT or Department) published in the *Federal Register* a notice of proposed rulemaking (NPRM) that proposed several disclosure requirements to enhance the transparency of ancillary service fees so consumers know the true cost of air travel early in the purchasing process. (87 FR 63718). In the NPRM, the Department proposed to require U.S. air carriers, foreign air carriers, and ticket agents to clearly disclose passenger-specific or itinerary-specific baggage fees, change fees, and cancellation fees to consumers whenever fare and schedule information is provided to consumers for flights to, within, and from the United States. The Department also proposed requiring similar disclosures for fees for a child 13 or under to be seated adjacent to an accompanying adult, as well as the transactability of such seating fees. To ensure ticket agents could provide the proposed disclosures, the NPRM proposed requiring carriers to provide useable, current, and accurate information regarding fees to ticket agents that sell or display the carrier's fare and schedule information. The NPRM also proposed an implementation and compliance period of six months from the date of a potential final rule.

The NPRM provided for a comment period of 60 days after publication of the NPRM in the *Federal Register*, i.e., December 19, 2022. In response to a request for additional opportunity to comment, the Department extended the comment period for an additional 35 days to January 23, 2023.¹ The Department subsequently received a request to further extend the comment period on the basis that the requestor was not able to view the January 12, 2023 meeting of the Aviation Consumer Protection Advisory Committee meeting when it occurred and that as of the time the request for extension was submitted, the meeting materials had not been posted to the docket. The Department declined to extend the comment period based on that request. (88 FR 4923 (Jan. 26, 2023)). The Department received

¹ 87 FR 77765 (Dec. 20, 2022).

another request for additional time to provide comments on the NPRM, based primarily on technological and interface issues identified by the petitioner. The Department is considering whether to grant that request and will publish its determination in the *Federal Register* (See <https://www.transportation.gov/airconsumer/AncillaryFeeNPRM-Procedural-Information-January23-2023>.)

On January 23, 2023, multiple commenters petitioned the Department for a public hearing on the NPRM pursuant to the Department's regulation on rulemakings relating to unfair and deceptive practices, 14 CFR 399.75.² Airlines for America raised two questions in its petition: whether consumers are or are likely to be substantially injured or are misled by airlines' current disclosures of ancillary service fees; and whether disclosures of itinerary-specific ancillary fees at the time of first search will result in the display of incomplete or inapplicable ancillary fee information, cause consumer confusion, and distort the marketplace. The Travel Technology Association (Travel Tech) states in its petition that there is a fundamental disputed factual issue as to whether the proposed display requirements would benefit or harm consumers. Travel Tech also believes that the proposed disclosures are technically infeasible and has requested a hearing to discuss these concerns as well as the Department's proposed time frame for compliance. In its comment on the NPRM, Google LLC also requested a hearing based on its assertion that the Department's analysis was flawed and that it was deficient in providing its complaint-based evidence justifying the rulemaking. In arguing that a hearing is in the public interest pursuant to 14 CFR 399.75, Airlines for America and Travel Tech assert that the underlying proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other factual issues that are genuinely in dispute; the ordinary public comment process is unlikely to provide an adequate examination of the issue to permit a fully informed judgement; the resolution of the disputed factual issues would likely have a material effect on the costs and benefits of the proposed rule; the requested hearing on the issue would advance the consideration of the proposed rule and the General

² See, e.g., petitions for hearing from Airlines for America, <https://www.regulations.gov/comment/DOT-OST-2022-0109-0091>, the Travel Technology Association, <https://www.regulations.gov/comment/DOT-OST-2022-0109-0239>, and Google LLC, <https://www.regulations.gov/comment/DOT-OST-2022-0109-0088>.

Counsel's ability to make the rulemaking determinations required by the Department's regulation; and a hearing will not unreasonably delay completion of this rulemaking.

The Department has carefully considered the petitions for a public hearing consistent with 14 CFR 399.75 and is granting a public hearing to afford Petitioners and other stakeholders an opportunity, in addition to the public comment process, to present factual issues that they believe are pertinent to the Department's decision on the rulemaking.³ The scope of the hearing is limited to the factual issues specified in this notice.

The Department's proposals are set forth in the October 2022 NPRM. The issues identified by Petitioners concerning the Department's NPRM and on which they request a hearing are discussed in more detail in their petitions for rehearing. The information the Department is requesting during the hearing on these issues is summarized below.

Issue 1: Whether consumers are or are likely to be substantially injured or misled by airlines' current disclosures of ancillary service fees

The Department welcomes information during the hearing on the following topics, to the extent it has not been provided in any written comments already submitted to the Docket:

- Information from consumers and others about instances in which they searched for and/or purchased tickets for air travel and were confused or surprised by the baggage fees that they would need to pay.
- Statistical information from carriers and ticket agents about the number of complaints they receive from consumers expressing confusion or surprise at the baggage fees they were asked or made to pay.

³ With its comment and petition, Google LLC noted similar concerns as Airlines for America and Travel Tech regarding the substance of the NPRM's proposals. However, Google LLC's petition was articulated in a footnote which did not make a sufficient showing that a hearing would be in the public interest. See 14 CFR 399.75(b)(2) for factors that assist in determining whether a petition is in the public interest. As such, we deny Google LLC's petition for a hearing in part to the extent the subjects of Google's petition are not otherwise addressed as part of the petitions of Airlines for America and Travel Tech.

- Information from consumers and others about instances in which they searched for and/or purchased tickets for air travel and were confused or surprised by the ticket change or cancellation fees that they would need to pay.
- Statistical information from carriers and ticket agents about the number of complaints they receive from consumers expressing confusion or surprise at the ticket change or cancellation fees they were asked or made to pay.
- Information from consumers and others about instances in which they searched for and/or purchased tickets for air travel and were confused or surprised that they would need to pay a fee for a child age 13 or under to be seated next to an accompanying adult.
- Statistical information from carriers and ticket agents about the number of complaints they receive from consumers expressing confusion or surprise that they were asked or made to pay a fee for a child age 13 or under to be seated next to an accompanying adult.
- Data on the frequency with which consumers view ancillary fee pages on airline websites.
- Data on the frequency with which consumers using ticket agent websites click on links to airline ancillary fee policies (whether external or internal links).
- Data on the frequency with which consumers conduct itinerary searches on airline websites and on ticket agent websites.
- Data and information regarding whether the Department's proposals would require significant changes to product displays and how such changes could impact consumers.
- Any other *factual* information that is pertinent to the Department's determination on this proposal.

Issue 2: Whether disclosures of itinerary-specific ancillary fees at the time of first search will result in the display of incomplete or inapplicable ancillary fee information, cause consumer confusion, and distort the marketplace.

The Department welcomes the following information during the hearing to the extent it has not been provided in any written comments already submitted to the Docket:

- Information on whether and how ancillary fee information is currently displayed to consumers as they use airline or ticket agent online booking systems to purchase tickets.
- Information or data on the proportion of airlines and ticket agents that employ online booking systems that do not display specific ancillary fees on the itinerary search results page of the booking process but do display specific ancillary fees on other pages of the booking process prior to the consumer executing a purchase or reservation.
- Data or information on whether and to what extent the lack of ancillary fee information at the time of itinerary and fare selection results in higher total trip costs to consumers compared to alternatives or higher time spent on the ticket purchase process.
- Information from consumers and others about the time spent searching for ancillary fee information on an airline or ticket agent website.
- Information from consumers and others about the added time spent, if any, from restarting an itinerary search due to a lack of ancillary fee information being displayed upfront.
- Information from consumers and others about added costs and/or time spent on searching airline and/or ticket agent websites to find fees for baggage, changes and cancellations, and family seating.
- Information from consumers and others about added costs and/or time spent on calculating the total price of a ticket to include baggage fees and family seating fees.
- Data and information regarding any potential for consumer confusion from overcrowded displays or information overload that could result from the Department's proposal, particularly on mobile or other devices with smaller displays.
- Any other information that is pertinent to the Department's determination on this proposal.

Issue 3: Whether requiring fee disclosures on the first page of the itinerary search selection process would be technically infeasible.

The Department welcomes the following information during the hearing to the extent it has not been provided in any written comments already submitted to the Docket:

- Factual information or data on the proportion of consumers that search for and/or purchase tickets for air travel using mobile devices (e.g. mobile phones and tablets), and the proportion of ticket searches and/or purchases that are conducted using each type of mobile device.
- Factual information or data on the impact of additional disclosure requirements on webpage and booking engine load times.
- Factual or demonstrative information on alternatives to the proposed disclosure requirements, as well as how the proposed disclosure requirements would be represented and used on mobile displays.
- Information on whether additional time for compliance with the proposal would mitigate the above concerns.

II. Agenda, Hearing Officer, and Post-Hearing Actions

During the March 16, 2023, hearing, the Department will hear information from the public on the three subjects described above. The Department's tentative positions on these subjects are articulated in the NPRM. The Department does not expect to provide further summary or explanation on its positions.

The Department is appointing Blane Workie, Assistant General Counsel, Office of Aviation Consumer Protection, as the Hearing Officer presiding over the hearing. The Department's regulations at 14 CFR 399.75 specify that the General Counsel shall arrange for a hearing officer to preside over the hearing. The regulations further provide that after the hearing process is complete, the General Counsel must consider the record of the hearing and make a reasoned determination whether to terminate the rulemaking, proceed with the rulemaking as proposed, or modify the

proposed rule. The regulations further require the General Counsel to explain, in an appropriate rulemaking document published in the *Federal Register*, the rationale for the post-hearing decision made by the General Counsel. The rationale for the post-hearing decision made by the General Counsel will be explained in any final rule or other appropriate rulemaking document issued by the Department for this action.

III. Public Participation

The March 16, 2023, hearing will begin at 10:00 a.m. ET, and the Department will provide time for opening remarks by the Hearing Officer. The meeting will then transition to public comments and presentations. Any oral comments presented should be limited to the subjects described in this Notice and be brief so all participants will have an opportunity to speak. Depending on the volume of request for oral comments that we receive and the time available, we may be able to accommodate additional comments and/or presentations that speakers wish to add. Individual members of the public who wish to present oral comments must notify the Department of Transportation, no later than Monday, March 13 via email at Ryan.Patanaphan@dot.gov that they wish to present oral comments. The email should (1) identify specific subject(s) on which you wish to provide comments; and (2) state the organization or entity you are representing or that you are speaking as a member of the public. All written materials (e.g., PowerPoint presentations) presented at the hearing will be made part of the meeting's record.

Consistent with the requirement of 14 CFR 399.75, the Department plans to reopen the comment period for this rulemaking on March 16, 2023, the date of the hearing, and the comment period will remain open for seven (7) days, closing on March 23, 2023. Interested parties who wish to file statements or comments that are specifically related to the subject(s) discussed at the hearing may submit their written comments electronically to the NPRM Docket (DOT-OST-2022-0109).

After the hearing and after the record of the hearing is closed, the hearing officer will place on the rulemaking docket minutes of the hearing reflecting the evidence and arguments presented on the issues.

IV. Viewing Documents

Documents associated with the NPRM on Enhancing Transparency of Airline Ancillary Service Fees may be accessed in the rulemaking Docket (DOT-OST-2022-0109). Dockets may be accessed at <https://www.regulations.gov>. After entering the relevant docket number click the link to “Open Docket Folder” and choose the document to review.

Signed in Washington, D.C., on this 28th day of February 2023.

John E. Putnam,
General Counsel,
U.S. Department of Transportation.
[FR Doc. 2023-04510 Filed: 3/2/2023 8:45 am; Publication Date: 3/3/2023]